

Q261A1

U.S. DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

'09 APR 30 P1:22

Donald Verbanac #100178  
Stanley Correctional Institution  
100 Corrections Drive  
Stanley, Wisconsin 54768-6500  
- Plaintiff

Case No. **09-C-0438**

JON W. SANFILIPPO  
CLERK

v

Deputy Clausing (Individual Capacity)  
Deputy Uhan (Individual Capacity)  
Washington County Sheriffs Department  
500 Schmidt Road  
West Bend, Wisconsin 53095-1986  
- Defendants



**CIVIL COMPLAINT**  
**42 U.S.C. § 1983**

**JURISDICTION**

This court has jurisdiction pursuant to 42 U.S.C. § 1983 and Wis. Stats. 893.53

**PARTIES IN THIS ACTION**

1. The plaintiff is a citizen of The United States Of America.
2. The defendants are sheriffs at The Washington County Sheriffs Office.

**CAUSE OF ACTION**

**THE DEFENDANTS ARRESTED THE PLAINTIFF INSIDE OF HIS HOME WITHOUT A WARRANT, WITHOUT PROBABLE CAUSE, WITHOUT EXIGENT CIRCUMSTANCES FOR THE ARREST THEREFORE, THE PLAINTIFF'S ARREST IS IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.**

## STATEMENT OF FACTS

1. On 9/19/07 at 10:00 A.M., the defendant's came to the plaintiff's home at 373 County Highway MY to investigate an alleged incident at the plaintiff's home.
2. The defendants upon arrival at the plaintiff's front door of the plaintiff's home, ask the plaintiff if he knew EML.
3. The defendants then ask the plaintiff if they could search the plaintiff's home.
4. The plaintiff told the defendants that they could not search his home.
5. Based solely on the fact that the plaintiff told the defendants that they could not search the plaintiff's home, the defendants placed handcuffs on the plaintiff and placed the plaintiff under arrest.
6. The defendants did not have probable cause for the plaintiff's warrantless arrest inside the plaintiff's home.
7. The defendants did not have a warrant to arrest the plaintiff.
8. The defendants did not have exigent circumstances to arrest the plaintiff inside of his home.
9. Both the defendants know are should have known that in order to arrest the plaintiff inside his home the defendants must have a warrant or exigent circumstances. See Payton v New York 445 U.S. 573 (1980), Kirk v Louisiana 536 U.S. 635 (2002), United States v Cazares-Olivas 515 F.3d 726 (7<sup>th</sup> cir.2008), United States v Xiong 60 F.Supp.2d 903 (E.D.Wis.1999).
10. The defendants intentionally refused to present an affidavit to a judge in support of

the plaintiff's warrantless arrest therefore, the defendants denied the plaintiff his constitutional right to an independent judicial determination of probable cause. See *Gerstein v. Pugh* 420 U.S. 103 (1975), *United States v. Leal* 876 F. Supp. 190 (C. D. Ill. 1999).

11. The defendants know or should have known that when they arrested the plaintiff inside his home without a warrant and affidavit in support of the plaintiff's warrantless arrest must be presented within 48 hours of the plaintiff's warrantless arrest for an independent judicial determination of probable cause. See *Gerstein Supra*, *County of Riverside v. McLaughlin* 500 U.S. 44 (1991).

#### **DEFENDANTS HAVE NO ABSOLUTE OR QUALIFIED IMMUNITY ARGUMENT**

The defendants know or should have known that in order to arrest the plaintiff inside his home, the defendants must have a warrant or exigent circumstances. See *Payton*, *supra*. The plaintiff's Fourth Amendment rights were clearly established at the time the defendants arrested the plaintiff inside his home without a warrant therefore, the defendants have no immunity. See *Elder v Holloway* 510 U.S. 510 (1990). See 18 U.S.C. S. § 242.

#### **RELIEF REQUESTED**

The plaintiff request that a money judgment be entered against the defendants in the amount of \$250,000.00 TWO HUNDRED AND FIFTY THOUSAND DOLLARS.

I THE UNDERSIGNED SWEAR UNDER PENALTY OF PERJURY THAT  
THE FACTS OF THIS COMPLAINT ARE TRUE AND CORRECT

Date 04/24/09

Donald P. Verbanac  
Donald Verbanac Plaintiff Pro Se